Supreme Court, U. S.
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APPENDIX A(1)

OPINION OF TRIAL COURT

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

NO. 75-1061

WESTERN GRAIN COMPANY, a corporation,

Appellant

v.

STATE OF ALABAMA,

Appellee

ON APPEAL FROM THE COURT OF CIVIL APPEALS AND THE SUPREME COURT OF ALABAMA

JURISDICTIONAL STATEMENT

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APPENDIX A(1)

WESTERN GRAIN COMPANY, a corporation, Plaintiff-Appellant	IN THE CIRCUIT COURT TENTH JUDICIAL CIRCUIT OF ALABAMA
vs.	CIVIL CASE NOS. 151-493 - 151-494 151-495
THE STATE OF ALABAMA, Defendant-Appellee	(Formerly in Equity)

FINAL DECREE

This cause having been submitted to the Court for final decree upon the written stipulation of the parties and the oral testimony and exhibits introduced in open court by both parties, and the Court having duly considered the same and the written Briefs filed by each party hereto, now makes the following findings of fact and conclusions of law, and renders judgment accordingly.

Findings of Fact.

1. These are three actions by the plaintiff, Western Grain Company, a corporation ("WESTERN"), against the State

of Alabama to recover certain sums assessed against it by the State Department of Revenue as additional income taxes for the calendar years 1965, 1965 and 1966 (taxable years in question), and paid to the State under protest. They come to this Court on appeal duly filed by plaintiff from each of said final assessments, pursuant to provisions of Section 140, Title 51, Code of Alabama 1940, recompiled 1958, notices of which were duly filed with the Register of this Court and with the State Department of Revenue, and all other proceedings and actions necessary to perfect said appeals were duly and timely taken by plaintiff, as required by law. All three actions have been consolidated for trial, and for the rendition of a single decree.

2. WESTERN, a Delaware corporation, was during the taxable years in question engaged in the grain milling business; milling, manufacturing and selling mixed feeds and grain products in the State of Alabama as well as outside Alabama. At all times material here WESTERN was on the accrual method of accounting, in accordance with sound and generally accepted accounting principles, and reported its income for income tax purposes both to the State of Alabama and to the United States, using the accrual method of accounting, as required to do so by Reg. 383.3 of the State Department of Revenue, as well as the applicable Federal income tax laws and regulations.

3. For the calendar years ended December 31, 1964, 1965 and 1966, WESTERN duly and timely filed its income tax

returns with the State of Alabama, showing a taxable income, derived from sources within as well as without the State of Alabama, amounting to the sums of $947,708.97, $2,263,541.40 and $5,271,919.85, respectively; and duly, properly and correctly reflected in such income tax returns the true and correct amount of its individual federal income tax liability due the United States on such taxable income, which federal tax liability the plaintiff duly, correctly and properly accrued on its books during each taxable year, all in accordance with sound and generally accepted accounting principles.

4. During each of the said calendar years, WESTERN also duly, properly and correctly accrued on its books, and duly, properly and correctly reflected

in each of the income tax returns filed with the State of Alabama that portion of its federal income tax liability so due and accrued, which is allocable to, or which is in proportion to, the income derived by the plaintiff from sources within the State of Alabama, amounting to the sums of $393,392.63, $192,887.38 and $1,912,780,000, [1/] respectively.

5. In computing the amount of the taxable income upon which income tax was due and payable by WESTERN to the State of Alabama for each of said calendar years, WESTERN, except to the extent indicated below, duly and properly deducted the

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1/ The parties have agreed that the amount of the federal tax apportioned and deducted for the year 1966 was in error and that the amount claimed by plaintiff to be recoverable from the State for the year 1966 is to be reduced from $102,013.63 actually paid by plaintiff on April 19, 1968 upon the additional assessment for the year 1966 to the sum of $75,695.40.

correct prorata amount of the accrued federal income tax which is allocable to and connected with its income derived from sources within the State of Alabama.

6. During each of the taxable years in question, plaintiff was a wholly owned subsidiary of Diversa, Inc., a Delaware corporation; and in each of those years the plaintiff joined with its parent and other non-resident affiliated corporations, none of which did business in the State of Alabama, in filing consolidated United States income tax returns, pursuant to provisions of Section 1501, et seq. of the Federal Internal Revenue Code, and the Regulations thereunder. In connection with the filing of such consolidated returns WESTERN prepared and sent to its parent a federal income tax return, which in all material respects was identical with

the return it would have filed with the Internal Revenue Service had plaintiff reported its income on a separate individual return. WESTERN executed these federal joint consolidated returns, along with its parent and the other affiliated corporations, by executing and filing the various forms and documents required to be executed and filed by the members of an affiliated group under the provisions of the federal laws and regulations applicable thereto. The consolidated returns thus prepared and filed by plaintiff's parent with the Internal Revenue Service during each of the taxable years in question contained, as required by federal law, a copy of the individual and separate income tax returns of the parent and of all of its affiliated corporations, including the plaintiff.

7. Pursuant to an agreement by and between the plaintiff and its parent, the plaintiff was obligated to pay to its parent all amounts accrued on its books for federal income taxes, based upon plaintiff's individual liability for such taxes to the Internal Revenue Service, and the plaintiff did pay to its parent in each of the taxable years in question the amount of the federal income taxes which was so accrued and which was due and payable by the plaintiff to the United States for each of said calendar years.

8. The parent of plaintiff, and other corporations affiliated therewith, and which joined in the filing of the consolidated returns for each of the years in question, sustained certain losses during the taxable years in question. In computing the consolidated taxable income

of the group of corporations the losses of the parent and the other affiliated corporations were used to offset the taxable income of WESTERN set out in paragraph 3 above, as permitted by the provisions of Section 1501, et seq. of the Federal Internal Revenue Code. As a result, the consolidated returns covering Diversa, Inc. and its affiliated subsidiaries, including the plaintiff, showed a loss for each of the taxable years 1964, 1965 and 1966, and Diversa, Inc., as the common parent authorized to file the consolidated returns on behalf of itself and its subsidiaries, paid no federal income tax for those years.

9. The amounts received by the common paret from WESTERN covering its own liability for federal income taxes for each of said calendar years was distributed

by the parent among the loss corporations affiliated therewith and which joined in the filing of the consolidated income tax returns for those years.

10. In the year 1968, Diversa, Inc., the common parent of plaintiff, had substantial earnings in excess of one million dollars, and a tax liability in excess of a half million dollars. Under the carry-forward and carry-back provisions of the federal income tax laws and regulations (See, §172 of the Internal Revenue Code of 1954, as amended), if no consolidated returns were filed by Diversa, Inc. for the taxable years in question, Diversa would have been able to carry forward the losses sustained by it in the years 1964, 1965 and 1966, and apply such losses against its earnings in the year 1968, with the result that its taxable income

and the amount of taxes due thereon to the United States for that year would have been substantially reduced. Such loss carry-forward privilege was lost by Diversa, however, because of the filing of the consolidated returns for the years 1964, 1965 and 1966, in which Diversa applied its losses against the taxable earnings of the plaintiff.

By the same token WESTERN by joining in the consolidated returns lost its opportunity to carry-back any losses it might sustain in future years and apply them against its earnings during the taxable years in question, and to secure a refund of income taxes paid for those years.

11. In 1967, the State Department of Revenue made an audit of the income tax returns of WESTERN for each of the

calendar years in question, and disallowed as a deduction from plaintiff's net income, the prorata amount of the federal income taxes so accrued by WESTERN and which were allocable to and connected with the income of WESTERN derived from sources within the State of Alabama. The disallowance was made on the sole ground that "while the plaintiff accrued the amount of its federal taxes on its books and paid the same to its parent, the same was not in fact paid by the parent to the United States at the time of the filing of the consolidated returns for those taxable years.", according to the stipulation of the parties. According to the official explanation of the State Department of Revenue made at the time of the audit the disallowance resulted "according to Alabama Income Tax Reg. 402.2 and also per court

case of Southern Railway vs. State of Alabama 1945".[2/]

12. The disallowance of the federal income tax deductions resulted in an assessment against WESTERN of additional income taxes for the years 1964, 1965 and 1966 of $8,620.55, $24,664.36 and $95,639.98, respectively.

13. On April 19, 1968, plaintiff appealed from the assessments pursuant to the provisions of Section 140, Title 51 Code of Alabama 1940, Recompiled 1958, and on said date paid to the State of Alabama the amount of said assessments, together with interest thereon, as follows:

(a) The sum of $10,235.16, covering the assessment for the year 1964;

2/ This is some unreported Circuit Court case which has not been called to the Court's attention by either party and upon which apparently neither party relies.

(b) The sum of $27,773.10, covering the assessment for the year 1965; and

(c) The sum of $102,013.63, covering the assessment for the year 1966. By agreement the claim for this payment has been reduced to $75,695.49.

The Issue Presented.

The principle issue presented in this cause is whether the plaintiff was entitled to deduct the prorata amount of the federal income taxes accrued by it, on the basis of its separate income tax liability to the United States, in computing the amount of its taxable income in its tax returns to the State of Alabama for the taxable years in question; and whether the State Department of Revenue had the power and authority to disallow such deductions on the sole ground that

the plaintiff paid the amount of its federal income tax liability to its parent, instead of to the IRS, and joined with its parent in the filing of federal consolidated income tax returns for each of said calendar years, where the consolidated returns by offsetting certain losses incurred by the parent, and other corporations affiliated therewith, against the earnings of plaintiff showed a loss for the affiliated group as a whole, and no tax due.

Conclusions of Law.

The Court turns first to a consideration of the basic constitutional provisions which allow the deduction by corporations of federal income taxes in computing net income for state income tax purposes. These constitutional provisions are:

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State tax on net income of corporations.--The legislature shall have power to levy and provide for the collection of taxes for state purposes on net income of corporations, from whatever source derived, for the calendar year 1963, or for any fiscal year beginning in the calendar year 1963, and each year thereafter, at a rate not exceeding five percent. However, all federal income taxes paid or accrued within the taxable year by corporations shall always be deductible in computing net income taxable under the income tax laws of this state, provided that in the case of foreign corporations the amount of federal income tax deductible shall be in proportion to income derived from sources within Alabama, to be determined in accordance with such laws as the legislature may enact." (As proposed by Act 91, Laws, 1963, 2nd Spec. Sess., and adopted at the election of December 10, 1963.)(Und. added)

In considering the above quoted constitutional amendment, the Court must be guided by the well recognized Canon of Construction that is construing the Constitution the leading purpose should be to ascertain and effectuate the intent and

object designed to be accomplished (State vs. Birmingham Southern R. Co., 62 So. 87 182 Ala. 475; Railroad Commission of Ala. vs. Ala. Great Southern R. Co., 64 So. 13, 185 Ala. 354; Alexander vs. State, Ex. Rel. Colver, 150 So. 2d 204, 274 Ala. 441); that in construing the language of the Constitution, the words used, unless they are technical, are to be understood in their usual and ordinary sense (Hagan vs. Commissioners Court of Limestone County, 49 So. 417, 160 Ala. 544; ex parte Pepper 64 So. 112, 185 Ala. 284), and that where the intention of a constitutional provision is clearly expressed by its terms or by necessary implications therefrom, no resort to secondary rules is necessary to obtain its meaning. (State Docks Commission vs. State, Ex Rel. Cummings, 150 So. 345, 227 Ala. 414.)

In the light of these generally

accepted rules of construction, the Court is constrained to conclude that the question at bar is foreclosed against the State by the clear mandate of the constitutional amendment that all federal income taxes whether paid or accrued within the taxable year by corporations shall always be deductible in computing net income taxable under the income tax laws of this state, and that in the case of foreign corporations the amount of the federal income taxes so deductible are limited only by the requirement that it be "in proportion to income derived from sources within Alabama, to be determined in accordance with such laws as the Legislature may enact."

What laws then did the Legislature of Alabama enact subsequent to December 10, 1963. Between December 10, 1963 and the year 1969, the Legislature enacted no

law dealing with the deductibility of federal income taxes by corporations, domestic or foreign. The only Legislative Act on the subject in effect on the date of the passage of the Constitutional amendment was Section 402, Title 51, Code of Alabama 1940, as amended by Act No. 107, passed on May 8, 1963. This Act expressly denied to corporations the right to deduct federal income taxes in computing net income subject to Alabama income tax laws.

The State points to Act 104, Acts of Alabama, Second Special Session 1963, page 289. This Act did indeed implement the Constitutional Amendment, but it simply amended Section 398, Title 51 of the Code, dealing with the "imposition of taxes", and increased the state tax from 3% to 5%. Act 104 does not deal with de-deductions of any kind. It was not until

Act No. 24, Laws 1969, First Special Session, that the Alabama Legislature amended Section 402(1), Title 51, of the Code so as to remove the prohibition of the deduction of federal income taxes created by Act 107. Act No. 24 expressly allows the deduction of federal taxes in computing the net income of corporations:

> "(3) Taxes paid or accrued within the taxable year (a) imposed by the authority of the United States,...in the case of a foreign corporation taxes paid or accrued within a taxable year...; the amount of federal income tax which shall be deductible by such foreign corporation shall be determined by the ratio that the net income...of the corporation on business done within Alabama bears to its net income... from business done both within and without the State of Alabama."

Accordingly, this statute may be said to be the first enactment by the Legislature of Alabama to implement the deduction provisions of the Constitutional

Amendment above set out. While this amendment to Section 402(1), Title 51 of the Code does not control the taxable years at issue, it is significant to note the legislative intent that all deductions for taxes are to be made on the basis of either actual payment or accrual, and that the apportionment of federal income taxes in the case of foreign corporations is to be determined simply by the ratio which the amount of business done in Alabama bears to the business done within and outside of Alabama.

The State also points to Regulation 402.2 promulgated by the State Department of Revenue on November 16, 1960, (initially promulgated in 1962), but this regulation does not support the State's contention here. On the contrary, it supports the position of the plaintiff.[3/] This

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regulation, in pertinent part, provides:

> "Where a corporation operates both within and without Alabama..., the amount of federal income tax allocated to Alabama should be determined by the ratio that the net income from sources within Alabama bears to the total net income from all sources as shown by the Federal income tax return. The Federal income tax to be apportioned in this manner is the tax accrued as shown by the final federal income and excess profits tax return of taxpayer..."

The consolidated returns filed by the parent of plaintiff in its behalf and in behalf of the other affiliated

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3/ The plaintiff contends that this regulation adopted in 1960 is geared to the Statute, Section 402, and not to the Constitutional Amendment adopted in 1963, and that the latter part of this regulation dealing with the deductibility of federal income taxes could not have been in effect in 1964, 1965 and 1966, during which years Section 402, as amended by Act 107, expressly denied such deduction. While there is a great deal of merit to plaintiff's contention, it is unnecessary for the Court to decide this question, since there is nothing in this regulation which deprives plaintiff of the claimed deductions.

corporations constitutes under the federal tax laws the final federal income tax and excess profits tax return of the parent as well as of all of its affiliated corporations. See, Federal Regulations 1.1502-12a - 15a - 18a - 31a (a) 16A. Pursuant to the federal law and these regulations incident to the filing of consolidated returns, each of the corporations joining in a consolidated return is required to prepare and file as part thereof its own separate and individual tax return.

The consolidated returns prepared and filed by Diversa, Inc., with the Internal Revenue Service during each of the taxable years in question contained, as required by these federal regulations, a copy of each of the individual and separate income tax returns not only of the

parent, but of each of its affiliated corporations, including the plaintiff.

The consolidated returns for each of the taxable years in question duly and properly reflected the tax liability of the plaintiff to the United States Government for each of the taxable years in question, as if it filed separate income tax returns, which tax liability was consistent with the amount of the tax liability plaintiff accrued on its books, and which was reflected in its income tax returns filed with the State of Alabama for these taxable years.

The Court concludes, therefore, that plaintiff fully complied with the provisions of Regulation 402 of the State Department of Revenue, assuming the same to be applicable.

The Question of Payment of the Accrued Taxes.

The State next argues that the deductions should be disallowed because the plaintiff did not pay the amount of the accrued federal taxes to the IRS, but instead paid the same to its parent, but neither the constitutional amendment, nor any statute of the State, nor any regulation of the State Department of Revenue in effect during the taxable years in question requires such payment. On the contrary, the constitutional amendment speaks alternatively to "all federal income taxes paid or accrued." So does the implementing statute, Section 402(1) of 1969. So, also, does Section 402 as it existed prior to 1963.

It is significant also to note here that Regulation 402.2 of the State Department of Revenue promulgated on November 16, 1960, and claimed by the State to be in effect during the taxable years

in question, and as the very basis upon which the additional additional assessments are grounded, eliminates the alternative "paid" altogether and speaks solely to "the tax accrued as shown by the final federal income and excess profits tax return of the taxpayer..."

Furthermore, the term "paid" is defined by Section 376(k), Title 51, Code of Alabama 1940, as:

> "The term 'paid' for the purpose of deduction and credit hereinafter provided for with respect to income tax means paid or accrued or paid or incurred, and the term 'paid or incurred' and 'paid or accrued', shall be construed according to the method of accounting on the basis on which the net income is computed under this chapter."

The State's contention that federal taxes to be deductible for state income taxes must be both accrued and paid is not only contrary to the constitutional, statutory and regulatory provisions, but

also to the adjudicated decisions of both State and Federal Courts.[4/]

The United States Supreme Court adopted the "all events test" in United States vs. Anderson, 269, U.S. 422, 70 L. Ed. 347, 46 S. Ct. 131, to determine the deductibility of taxes by an accrual basis taxpayer. According to this test, taxes are deductible by a taxpayer on an accrual basis if all events fixing the fact of, and the amount of, the taxpayer's liability have transpired, though the tax is actually not paid. This is true even

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4/ The First National Bank vs. State, 29 So. 2d 673; State vs. Yellow Pine Lumber Co., 83 So. 2d 317; Clark, et al vs. State, 51 So. 2d 882; Mertens Law of Federal Income Taxation, Vol. 5, Sections 27.52, 27.55 and 27.57; Mertens Law of Federal Income Taxation, Vol. 2, Sections 12.08, 12.76 and 12.91; Section 376(k), 383 and 384 Title 51, Code of Alabama, 1940, Regulation 383.3 of the State Department of Revenue.

though the exact amount may not have been precisely ascertained by the taxpayer at the close of the year. Frost Lumber Industries vs. Commissioner of Internal Revenue, 128 F.2d 693 (Fifth Circuit); Santa Fe Drilling Co. vs. Riddell, 217 F. Supp. 630.

In Yellow Pine Lumber Company, the Supreme Court of Alabama followed this rationale, holding:

> "It is well settled that where accounts are kept and tax returns made on the accrual basis as distinguished from the cash basis, income is accrued to and allocable to the year in which the right to receive the income becomes fixed, even though the income is not actually received until a subsequent year."

By the same token, where accounts are kept and tax returns made on the accrual basis as distinguished from the cash basis the same principles apply to the accrual of taxes for tax purposes.

Clarke vs. State; Santa Fe Drilling Co. vs. Riddell, supra.

Accordingly, the Court finds and holds that all events fixing the fact of and the amount of the plaintiff's own and separate income tax liability to the United States have transpired though not paid, during each of the taxable years in question; that the plaintiff duly, properly and correctly accrued on its books, and duly, properly, and correctly reflected in each of its income tax returns filed with the State of Alabama during each of said taxable years its accrued federal income tax liability due by it to the United States on its taxable income earned within and without the State of Alabama; and that the plaintiff duly, properly and correctly apportioned the prorata amount of the federal income tax so accrued during each of the taxable years in ques-

tion, which is allocable to and connected with the income of plaintiff derived from sources within the State of Alabama, except the allocation made during the year 1966, as hereinabove set out, which has now been corrected and adjusted by agreement of the parties.

The Effect of the Consolidated Returns

Finally, the Court turns to consider the question of the effect of the joinder by the plaintiff in the filing of the federal consolidated income tax returns during the taxable years in question.

The State contends that since the earnings of WESTERN were offset by the losses of its parent and other affiliated corporations, and the consolidated group showed a loss and owed no tax, WESTERN was not entitled to a deduction for State

income tax purposes of any portion of the federal tax allocable to its earnings derived from sources in Alabama. The Court disagrees, and accepts as sound the argument of plaintiff that it would be highly unfair and unjust that the State resort to the federal consolidated returns for the purpose of defeating the plaintiff's federal tax deduction on the theory that the consolidated group of corporations showed an operating loss upon which no federal tax was due, and at the same time, divorce the plaintff from the consolidated group for the purpose of determining and taxing its earnings on a separate basis.

The concept of filing consolidated returns for affiliated corporations is peculiar to federal income tax law and is completely foreign to the Alabama State Income Tax System. The income of a foreign

corporation doing business in Alabama for State tax purposes must be determined upon its own separate operations; and such income may not be by losses or increased by profits of affiliated corporations, especially those doing business outside of Alabama. In like manner, the allowable deduction to a corporation doing business in Alabama for federal income taxes must also be determined upon an individual basis, that is, upon the extent of the corporation's separate tax liability to the United States on its own income, properly apportioned, as required by the Alabama Constitution, unaffected by any losses or profits of its parent or other affiliated corporations. 5/ The right and

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5/ Even the losses sustained outside Alabama by a domesticated foreign corporation itself have been held by the Alabama

obligation of the plaintiff as a separate taxpayer to accrue the amount of federal taxes during the taxable years in question is to be determined by federal laws. 6/ The federal decisions are clear to the view that corporations joining in the filing of consolidated returns continue to be separate taxable units as to their respective taxable income and are the only "taxpayers", within the meaning of the federal income tax statutes. The consolidated group is a mere computing

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Court of Appeals in State Dept. of Revenue vs. Fuqua, 261 So. 2d 410, not to affect the deductibility of the amount of federal taxes which "would have been paid" by the corporation on its earnings derived from sources in Alabama.

6/ Sloss vs. State of Alabama, 89 So. 2d 174.

7/ Helvering vs. Morgan's, 79 L.Ed. 232, 293 U.S. 121; Wolford Realty Co. vs. Rose, 76 L.Ed. 1128, 286 U.S. 319.

unit upon whom no tax is levied by either state or federal law.

The State's reliance upon Trunkline vs. Collector of Revenue, 182 So. 2d 674 (La.) is misplaced for two reasons. In the first place Trunkline dealt with a Louisiana regulation which speaks specifically to the results of the joinder by a Louisiana domesticated corporation in the filing of a federal consolidated return, and which expressly disallows the deduction of federal income taxes where the consolidated return shows no federal tax liability. There is no such law or regulation here involved.

Secondly, the Louisiana Court held that deductions for income tax purposes are of legislative grace and that Louisiana elected not to grant deductions under the circumstances there involved. 'In Alabama, on the other hand, the allow-

ance of deductions of federal income taxes is no longer subject to legislative grace. The Constitutional Amendment adopted by the people in December 1963, abrogated Act No. 107, and in the strongest terms possible adopted the policy that federal income taxes "shall always be deductible". Thus, in Alabama, unlike in Louisiana, it is no longer within the power of the Legislature to deny such deductions. And it is certainly not within the power of the State Department of Revenue to do so.

This Court has the highest respect for the decision of the Honorable Eugene W. Carter in the Standard Oil Company case. However, Judge Carter adopted a formula for the apportionment of federal taxes among the profit corporations of a consolidated group, a situation which does not exist here. To the extent that

such decision may be said to apply to the facts here involved, this Court, with all due deference, declines to follow it.

On the contrary, the Decision of the Supreme Court of Kansas in the case of Cities Service Gas Co. vs. McDonald, 466 P.2d 277 is squarely in point, its logic and reasoning most persuasive, and it fully supports the position and claims of the plaintiff here.

Accordingly, the Court finds and holds that (1) the plaintiff properly and correctly accrued on its books the amount of the federal income taxes due by it to the federal government as a separate taxpayer; (2) that plaintiff was entitled to deduct the prorata portion thereof in determining its income for Alabama income tax purposes; (3) that the action of the State Department of Revenue in denying such deduction is inconsistent with and violates

the provisions of the Constitutional mandate of the State of Alabama, as above set out; (4) that the assessments made against the plaintiff for the taxable years in question are invalid and void, and (5) that the plaintiff is entitled to recover the amounts paid to the State of Alabama on account of such invalid assessments, together with interest thereon, from April 19, 1968.

Judgment

It is, therefore, ordered, adjudged and decreed that the plaintiff have and recover of the defendant as follows:

(a) The sum of $10,235.16, together with interest thereon at the rate of 6% per annum, from April 19, 1968, amounting to the sum of $3,851.00 covering payment upon the invalid assessment for the year 1964;

(b) The sum of $27,773.10, to-

gether with interest thereon at the rate of 6% per annum, from April 19, 1968, amounting to the sum of $10,387.00 covering payment upon the invalid assessment for the year 1965;

(c) The sum of $75,695.49, together with interest thereon at the rate of 6% per annum, from April 19, 1968, amounting to the sum of $28,310.00, covering payment upon the invalid assessment for the year 1966; or

(d) The total of the sums set out in (a), (b) and (c) above amounting in the aggregate to the sum of $156,251.75.

DONE and ORDERED at Birmingham, Alabama on this the 16th day of July, 1974.

/s/ William C. Barber
Circuit Judge